

Amend Section 6480.1 of the Sales and Use Tax Law to include a reference to the new state and local sales tax statutes for the computation of the sales tax prepayment on motor vehicle fuel, aircraft jet fuel, and diesel fuel. (Technical)

Source: Legislative Section

Under existing law, Section 6480.1 of the Sales and Use Tax Law requires suppliers and wholesalers of motor vehicle fuel (gasoline), aircraft jet fuel, and diesel fuel to collect a prepayment of the sales tax when they remove the fuel at the terminal rack, enter the fuel into California, or sell the fuels at any point after removal from the terminal rack. Section 6480.1 requires the Board to establish the sales tax prepayment rates on these fuels. The rate of prepayment is based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price as determined by industry publications. The Board is required, by November 1, of each year to establish the new prepayment rates for these fuels. The new rates take effect each April 1 and remains in effect through each March 31.

On August 2, 2003, Governor Davis signed two budget trailer bills, known as the "Sales and Property Tax Swap" or the "Triple Flip." Effective July 1, 2004, Assembly Bill 7X (Ch.13, Oropeza) and Assembly Bill 1766 (Ch. 162, Committee on Budget), will among other things, increase the state sales and use tax rate by 0.50 percent, decrease the Bradley-Burns local sales and use tax rate by 0.50 percent, and reimburse cities and counties for their local sales and use tax revenue losses with property tax revenues. This swap will continue until the deficit bonds have been repaid.

Assembly Bill 7X added Section 6051.5 of the Revenue and Taxation Code, to impose the new 0.50 percent state sales and use tax. The revenues generated from this tax are to be deposited into the Fiscal Recovery Fund and dedicated to the repayment of the deficit bonds. Assembly Bill 7X also added Section 7203.1 of the Revenue and Taxation Code, to provide that the tax rate imposed under Section 7202 is temporarily suspended, and the new tax rate to be applied instead is 0.75 percent for a county and 0.50 percent for a city.

This proposal would amend Section 6480.1 to include the new Sections 6051.5 and 7203.1 in the computation of the sales tax prepayment on fuels. The intent of Section 6480.1 is to base the prepaid sales tax on the combined state and local sales tax rates. The references to Sections 6051.5 and 7203.1 would bring the base at which the prepaid sales tax is computed in line with the combined state and local tax rate.

Section 6480.1 of the Revenue and Taxation Code is amended to read:

6480.1. (a) At any time that motor vehicle fuel tax or diesel fuel tax is imposed or would be imposed, but for the dyed diesel fuel exemption in paragraph (1) of subdivision (a) of Section 60100, or the train operator exemption in paragraph (7) of subdivision (a) of Section 60100 or paragraph (11) of subdivision (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480, would be deemed to be imposed, on any removal, entry, or sale in this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. However, if no sale occurs at the time of imposition of motor vehicle fuel tax or diesel fuel tax, the supplier shall prepay the retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel fuel. The prepayment required to be collected by the supplier constitutes a debt owed by the supplier to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a supplier or wholesaler who has consumed the fuel has paid the use tax to the board. Each supplier shall report and pay the prepayment amounts to the board, in a form as prescribed by the board, in the period in which the fuel is sold. On each subsequent distribution of that fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of sale. Each supplier shall provide his or her purchaser with an invoice for, or other evidence of, the collection of the prepayment amounts which shall be separately stated thereon.

(b) (1) A wholesaler shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. Each wholesaler shall provide his or her purchaser with an invoice for or other evidence of the collection of the prepayment amounts, which shall be separately stated thereon.

(2) Each wholesaler shall report to the board, in a form as prescribed by the board and for the period in which the motor vehicle fuel, aircraft jet fuel, or diesel fuel was sold, all of the following:

(A) The number of gallons of fuel sold and the amount of sales tax prepayments collected by the wholesaler.

(B) The number of tax-paid gallons purchased and the amount of sales tax prepayments made by the wholesaler.

(C) In the event that the amount of sales tax prepayments collected by the wholesaler is greater than the amount of sales tax prepayments made by the wholesaler, then the excess constitutes a debt owed by the wholesaler to the state until paid to the board, or until satisfactory proof has been submitted that the retailer of the fuel has paid the tax to the board.

(c) A supplier or wholesaler who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the motor vehicle fuel,

aircraft jet fuel, or diesel fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a supplier or wholesaler who has consumed the motor vehicle fuel, aircraft jet fuel, or diesel fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the sale was made. Failure of the supplier or wholesaler to report prepayments or the supplier's or wholesaler's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, supplier, or wholesaler, either on a temporary or permanent basis or otherwise. To be entitled to the credit, the retailer, supplier, or wholesaler shall retain for inspection by the board any receipts, invoices, or other documents showing the amount of sales tax prepaid to his or her supplier, together with the evidence of payment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents (\$0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) On April 1 of each succeeding year, the prepayment rate per gallon for motor vehicle fuel, rounded to the nearest one-half of one cent (\$0.005), of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, and 7202, 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as determined by the State Energy Resources Conservation and Development Commission, in its latest publication of the "Quarterly Oil Report," of all grades of gasoline sold through a self-service gasoline station. In the event the "Quarterly Oil Report" is delayed or discontinued, the board may base its determination on other sources of the arithmetic average selling price of gasoline. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(g) On April 1 of each succeeding year, the prepayment rate per gallon for aircraft jet fuel, rounded to the nearest one-half of one cent (\$0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate

no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for aircraft jet fuel shall be equal to 80 percent of the arithmetic average selling price of aircraft jet fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of aircraft jet fuel. In the event the price of aircraft jet fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(h) On April 1 of each succeeding year, the prepayment rate per gallon for diesel fuel, rounded to the nearest one-half of one cent (\$0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for diesel fuel shall be equal to 80 percent of the arithmetic average selling price of diesel fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of diesel fuel. In the event the price of diesel fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.